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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,036	10/14/2003	Young Kook Cho	A412-JN	3176
7590	04/05/2005		EXAMINER	
			FIDEI, DAVID	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

6b

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/684,036	CHO, YOUNG KOOK	
	<b>Examiner</b> David T. Fidei	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3 and 6-8 is/are rejected.
- 7) Claim(s) 4,5,9 and 10 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date: ____ .   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: ____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: ____ .                                   |

### ***Claim Objections***

1. Claims 2-5 and 7-10 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

In claims 1 and 6, a “valve means for opening or closing the lower end of the funnel part of the cap body with a rotating action of the cap body relative to the externally threaded mouth of the bottle” is recited that is “means plus function” limitation that must be analyzed under 35 U.S.C. 112, 6<sup>th</sup> paragraph.

Claims 2 and 7 are no longer analyzed under 35 U.S.C. 112, 6<sup>th</sup> paragraph because the means is now modified to include only that structure recited. The fact that claims 2 and 7 do not include all of the structure of the “valve means” is evidenced by claims 4 and 9. Hence claims 2 and 7 fail to further limit the subject matter of the previous claim as the “valve means”, as disclosed, includes more than the subject matter of claims 2 and 7.

The same can also be said of the “sealing means” of claims 3 and 8.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3 and 6-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Alticosalian (Patent no. 6,763,939). As to claim 1 and 6, a cap device 1 is disclosed comprising a cap body 2 tightened to an externally threaded mouth 28 of a bottle 31, 55, a funnel part 5, a cap cover 4 assembled with the cap body 2 to form a cover and define a cavity 27 inside both the cap body 2 and the cap cover 4 to contain an additive 36. A valve means 3 for opening or closing the lower end of the funnel part of the cap body with a rotating action of the cap body relative to the externally threaded mouth of the bottle is also disclosed, see figure 2. The embodiment of figures 11-13 includes similar structure.

As to claims 2 and 7, the valve means comprises a valve member comprising a conical valve part 21 and a plurality of ribs defined between the openings 25 and a ring 22 integrated with outside ends of the radial ribs so as to be supported on an inner surface of a neck of the bottle, see figures 5, 6, 10 and 11. valve body shown in figure 5 having an inner wall at 22 and an outer wall at 20 defining a pair of walls with an annular space defined between the walls to receive the bottle mouth. The valve also includes A funnel part 5 is provided at a predetermined position in the additive containing part 27 that has a bottom opening closed by the conical valve part 21. The embodiment of figures 11-13 has a similar construction as would be apparent to one of ordinary skill in the art.

As to claims 3 and 8, sealing means provided at the junction between the valve member and the lower end of the funnel part of the cap body is formed by slots 13, 10, thus accomplishing a sealing effect at the junction, see figures 1 and 11.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-3 and 6-8 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2 and 4 of copending Application No. 10/683,996. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter of claims 1, 2, 6 and 7 recite similar subject matter as claims 1, 2 and 4 of copending Application No. 10/683,996 where the presently recited ring outside the radial ribs supported on the inside surface of the bottle can be construed as the inside sidewall of "the pair of sidewalls" recited in claim 2 of copending Application No. 10/683,996. Also claim 4 of copending Application No. 10/683,996 is broad enough to encompass the present claims 1-3 and 6-8 when read in light of the specification figures 1a-3c of the copending Application No. 10/683,996.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5. Claims 1-3 and 6-8 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 4 and 9 of copending Application No. 10/684,034. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter of claims 1-3 and 6-8 are embodied by claims 1-20 of copending Application No. 10/684,036 where the valve part is not patentable distinct from the present valve and sealing means presently recited.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Allowable Subject Matter***

6. Claims 4, 5, 9 and 10 would be allowable if rewritten or amended to overcome the objections under 37 CFR 1.75(c), set forth in this Office action.

**REPLY BY APPLICANT OR PATENT OWNER TO THIS OFFICE ACTION**

7. "In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to every ground of objection and rejection in this Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. The applicant 's or patent owner 's reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.

The reply must be reduced to writing (emphasis added)", see 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

Pointing out specific distinctions means clearly indicating in the written response what features/elements or distinctions have been added to the claim/claims, where support is found in the specification for such recitations and how these features are not shown, taught, obvious or inherent in the prior art.

If no amendments are made to claims as applicant or patent owner believes the claims are patentable without further modification, the reply must distinctly and specifically point out the supposed errors in the examiner 's action and must respond to every ground of objection and rejection in the prior Office Action in the same vain as given above, 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

The examiner also points out, due to the change in practice as affecting final rejections, older decisions on questions of prematurity of final rejection or admission of subsequent amendments do not necessarily reflect present practice. "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)" (emphasis mine), see MPEP 706.07(a).

**Conclusion**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David T. Fidei  
Primary Examiner  
Art Unit 3728

dtf  
April 4, 2005